



DOCKET FILE COPY ORIGINAL

June 22, 2000

RECEIVED

JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W., TW-A325  
Washington, D.C. 20054

**Re: Amendment of the Commission's Rules Regarding  
Installment Payment Financing for Personal  
Communications Services (PCS) Licensees;  
WT Docket No. 97-82**

Dear Ms. Salas:

Pursuant to Public Notice FCC 00-197, released June 7, 2000, I am enclosing for filing in the referenced proceeding an original and nine copies of the Comments of the Association of Communications Enterprises. Please file stamp and return one copy of the Comments (additional copy provided).

Please contact me if you have any questions.

Respectfully submitted,

*David Gusky / gus*

David Gusky, Executive Vice President  
The Association of Communications  
Enterprises

Enclosures

cc: Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau  
Kris Monteith, Chief, Policy Division  
Audrey Bashkin, Auctions and Industry Analysis Division  
Paul Murray, Commercial Wireless Division

No. of Copies rec'd 019  
List A B C D E

RECEIVED  
JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Amendment of the Commission's Rules  
Regarding Installment Payment  
Financing for Personal Communications  
Services (PCS) Licenses

## COMMENTS OF

The Association of Communications Enterprises ("ASCENT") hereby

ASCENT, formerly the Telecommunications Resellers Association, is the

ASCENT members provide voice and data services, including Internet access, high-speed

transport, local and long distance phone service, application services and wireless products.

ASCENT has more than 725 company and individual members, most of which are small to

medium-sized businesses. As such, ASCENT strives to assure that all service providers,

particularly entrepreneurial firms, have the opportunity to compete in the communications arena

and have access to critical business resources.

The Commission's tentative proposals contained in the Further NPRM reflect the competing interests the Commission must consider when setting spectrum policy. ASCENT applauds the Commission's continued promotion of its policy to encourage entrepreneurs to enter the market, but cautions against making any changes in the existing rules that would effectively limit opportunities for entrepreneurs to compete with larger companies in the auction process.

**I. THE COMMISSION SHOULD SEEK TO PROMOTE THE GOALS EMBODIED IN THE FINANCIAL ELIGIBILITY RULES.**

The interests of entrepreneurs and designated entities were clearly considered in the development of the Commission's tentative proposals regarding financial eligibility. It is important to note that the financial eligibility rules are necessary to achieve Congressionally mandated public policy goals. Some of the Commission's proposals further those goals, and ASCENT supports the Commission's decision not to modify them.

**A. The Rules Establishing Financial Qualifications for the C and F Blocks Accomplish Important Public Policy Goals.**

Congress directed the Commission to "promot[e] economic opportunity and competition" by "disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. 309(j)(3)(B). To implement this objective, the Commission established financial eligibility requirements for participation in the C and F block auctions. <sup>1/</sup> These provisions accomplish important public policy goals that cannot be achieved any other way. They are designed to produce a more competitive and diverse commercial mobile radio services ("CMRS") industry, with more open entry and thus more competition and consumer choice.

---

<sup>1/</sup> Further NPRM at ¶ 7.

Predictably, most of the larger companies filing comments in the previous related dockets supported doing away with the designated entity rules, because they cannot qualify to bid on this spectrum otherwise. <sup>2/</sup> But the comments of many other parties reflect a continued strong interest in participation in the CMRS industry by small businesses. <sup>3/</sup> The demand exists, and the Commission should retain the rules that will permit small businesses to enter and flourish in an industry dominated by large, vertically integrated players.

**B. The Commission's Tentative Proposals with Respect to the Spectrum Cap and Bidding Credits Will Help Achieve Those Important Objectives.**

In the Further NPRM, the Commission has tentatively proposed to retain the existing spectrum cap and at least retain bidding credits for small and very small businesses. These rules have enabled small companies to compete against larger players.

The Commission is right in its tentative conclusion to deny petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules. Again, the spectrum cap promotes dissemination of licenses to a wide variety of applicants, including entrepreneurs, and prevents excessive concentration of licenses. <sup>4/</sup> As the Commission has noted, a spectrum cap

---

<sup>2/</sup> Verizon Wireless, Petition for Clarification or Reconsideration (Apr. 17, 2000); U S WEST Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS, Petition for Reconsideration (Apr. 4, 2000); U S WEST Wireless, LLC, Petition for Waiver (Mar. 1, 2000); Cellular Telecommunications Industry Association, Petition for Rule Making of the Cellular Telecommunications Industry Association (Feb. 22, 2000); Sprint Spectrum L.P. dba Sprint PCS Petition for Waiver (February 22, 2000); See, e.g., AT&T Wireless Services, Inc., at 2-4; Sprint PSC at 2-3; Bell Atlantic Mobile, Inc., at 9-10; U S WEST Wireless, LLC, at 9-10; Ericsson, Inc., at 2-3, SBC Communications, Inc., at 12-13.

<sup>3/</sup> See, e.g., Burst Networks, Inc., at 2; Wireless Operating Company at 2-3; OPM Auction Co. at 2; Devon Mobile Communications, L.P., at 2-4; Leap Wireless International, Inc., at 3-4; CT Communications, Inc., at 3-4; Alpine PCS, Inc.; National Telephone Cooperative Association at 2; Rural Telecommunications Group/OPASTCO at 2.

<sup>4/</sup> In comments filed on January 25, 1999, ASCENT (then the Telecommunications Resellers Association) strongly supported retention of the spectrum cap.

therefore serves the public interest by promoting competition within geographic areas. Limiting the amount of spectrum any one carrier could accumulate increases the availability of spectrum for other carriers and increases the chances of an entrepreneur successfully competing for a license. Likewise, bidding credits have enabled small businesses to compete against larger companies even in “open” auctions. <sup>5/</sup> The Commission noted the importance of bidding credits in an open auction and has requested comment on increasing the bidding credits in such a situation. <sup>6/</sup> ASCENT supports the proposed increases to 25 percent and 40 percent for small and very small businesses, respectively. These credits will allow small companies to compete more effectively against large carriers.

**II. ANY RULE MODIFICATIONS SHOULD NOT EFFECTIVELY DIMINISH MEANINGFUL OPPORTUNITIES FOR ENTREPRENEURS.**

ASCENT recognizes that the Commission is attempting to balance competing interests in its tentative conclusion that certain rules should be modified in this rulemaking. However, the rules governing participation in C and F block auctions should result in meaningful opportunities for entrepreneurs to bid upon and win the licenses being auctioned. ASCENT is concerned that some of the proposed rule modifications will effectively diminish existing opportunities or relegate entrepreneurs to the least desirable, *i.e.*, the least profitable markets. Interest by entrepreneurs is still high in obtaining and utilizing the available licenses. <sup>7/</sup> Lower barriers to entry will result in greater diversity of licensees and, therefore, increased choices for consumers. Increased competition also will create a marketplace more conducive to the

---

<sup>5/</sup> Further NPRM at ¶ 40.

<sup>6/</sup> Further NPRM at ¶ 41.

<sup>7/</sup> See note 3, *supra*.

development of a wholesale wireless market, allowing resellers to provide even greater options for consumers.

**A. The Demand for PCS Spectrum by Entrepreneurs Is Still Strong.**

The comments filed in opposition to SBC, Nextel and U S WEST/Sprint petitions make it clear that the demand is still strong for this spectrum from entrepreneurs. 8/ The Commission should not give up on its goals for this spectrum simply because larger, more well-heeled carriers are eager to use it. A decision to abandon the Commission's goals for the C and F block spectrum would have lasting consequences for the composition of this industry and for competition in the CMRS market. The Commission should not forego the opportunity, in this and future auctions, to accomplish the procompetitive and proconsumer goals established by Congress in Section 257 of the Act, 47 U.S.C. § 257, and implemented by the Commission in its adoption of rules to enable small businesses to participate in the CMRS industry.

**B. Open Entry and a Greater Diversity of Service Providers Leads To More Competition and Consumer Choice.**

The interexchange market is perhaps the best example of the benefits that can flow from a diversity of facilities-based and resale service providers. That market is served by a plethora of facilities-based carriers with nationwide networks and many more carriers with regional networks. There are hundreds of resale-based carriers in the interexchange market as well. Resellers take advantage of numerous facilities-based networks to provide a wide range of choices for their customers. The competition among facilities-based providers is enhanced greatly by the participation of resellers.

---

8/ Further NPRM at ¶ 11.

The wireless market – and wireless consumers – stand to benefit from a larger number and diversity of both facilities-based and resale service providers. Retention of the PCS C and F block entrepreneur rules is essential to preserving that diversity of service providers. The CMRS market remains dominated by a few large, nationwide companies – AT&T Wireless, Verizon Wireless, SBC, Sprint PCS and Nextel – despite the addition of PCS spectrum. As long as that remains the case, competition will be limited and consumers will continue to pay higher prices and have lower service quality than they otherwise might have.

The PCS providers' own industry association, PCIA, itself has lamented the "extraordinarily concentrated" nature of this market in its opposition to lifting the CMRS spectrum cap. <sup>9/</sup> The Commission correctly recognized the importance of a multiplicity of service providers in its recent decision to retain the spectrum cap. Nothing has changed in the CMRS industry in the last few years to warrant a reversal of the Commission's position on small businesses. As the Commission observed in adopting those rules, "small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies . . . ." <sup>10/</sup>

---

<sup>9/</sup> In its reply comments in the CMRS spectrum cap proceeding, PCIA opposed lifting the spectrum cap, citing data showing that the PCS share of the wireless market is still relatively low, and arguing that the CMRS market is still "extraordinarily concentrated." See Reply Comments of the Personal Communications Industry Association (PCIA) in 1998 Biennial Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, et al., filed Feb. 10, 1999, at 8.

<sup>10/</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, 9 FCC Rcd 5532, released July 15, 1994, at ¶ 121.

**C. The Commission Should Proceed Cautiously If It Opens Bidding to Larger Industry Players**

Several of the Commission's tentative modifications to the current rules could potentially limit opportunities for entrepreneurs. For example, the Commission has proposed to divide available BTAs into two tiers based upon population. If the Commission adopts its proposal to reconfigure the 30 MHz C block licenses into three 10 MHz licenses, the Commission would allow "open" bidding within each BTA for at least some of those three licenses. This proposal appears to be based upon the Commission's conclusion that designated entities would not have to expend as much capital to be successful in smaller markets. However, the support for this conclusion appears suspect. The Commission's assertion that markets with larger populations inevitably require more capital to build out and provide service may not always accurately reflect the situation. Many smaller cities are less densely developed and therefore may require more equipment to serve the same number of customers than cities with larger populations. It appears as if the Commission is attempting to direct or at least encourage entrepreneurs to operate only in smaller markets. By implication, those markets are less desirable to the larger incumbents. The Commission should retain the rules that promote its initial objectives – disseminating licenses among a wide variety of applicants and promoting competition. Therefore, to further those objectives, the Commission should retain at least two of three 10 MHz blocks in each tier for entrepreneurs and designated entities only.

Other proposed rules may have a similar effect. ASCENT is concerned that the Commission's proposed revisions to its eligibility requirements would result in the effective marginalization of smaller companies. The Commission should carefully consider the future ramifications of its proposed revisions before adoption.



**D. Preservation of Rules That Ensure the Participation of Entrepreneurs Is Likely To Facilitate a More Competitive Wholesale Market for Wireless Service.**

Opening up the auction process for realistic participation by small businesses means new entrants and fresh approaches to providing and marketing CMRS services. In addition to the pro-competitive benefits of new entry, it is more likely that a small business auction winner will adopt a positive attitude toward resale of their services. As the Commission already has recognized, many incumbent CMRS-based providers (including PCS and SMRS carriers) have resisted allowing unrestricted resale of their wireless services. <sup>11/</sup> Unlike large incumbents, smaller new entrants may be more likely to welcome all customers, whether they are retail or wholesale customers. It is no accident that the largest winner in the PCS C and F block auction was a carrier (Nextwave) that planned to adopt a wholesale, carrier's carrier, strategy. New entrants and smaller companies must adopt innovative approaches to compete successfully against entrenched companies with established retail customer bases to protect.

Furthermore, a greater diversity of providers and business plans is more likely to break down resistance by incumbents to resale of CMRS services. That resale, in turn, will lead to more robust competition in the CMRS market. The history of the interexchange industry shows that as additional long distance networks were constructed, the incumbents felt additional pressure to deal on a nondiscriminatory basis with resellers. The arrival of a fourth network with a carrier's carrier strategy – Williams – helped to open the interexchange market to a much larger number of competitors. Today, the interexchange market has hundreds of participants (many of

---

<sup>11/</sup> Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, WT Docket No. 98-100 et al., 13 FCC Rcd 16857, FCC 98-134, released July 2, 1998, at ¶ 38 and n.114.

which are ASCENT members), thanks in large measure to the easy availability of resale and leased facilities.

The same potential exists in the CMRS market – but only if the Commission adopts policies designed to maximize the diversity of service providers and to facilitate new entry by smaller players with innovative approaches. The Commission recognized the importance of this diversity in its recent decision to retain the caps on CMRS spectrum. <sup>12/</sup> These same policy considerations dictate the preservation of the financial eligibility rules for PCS C and F block spectrum.

The Commission's own resale policies assume that there will be a large number of wireless licensees in each market. In deciding to sunset the resale obligation after the five-year PCS build-out period, the Commission relied upon the large number of PCS providers that would exist by the end of that time. <sup>13/</sup> The Commission concluded that the large number of CMRS licensees would make it unnecessary to have a rule mandating resale. <sup>14/</sup> At the time the resale sunset was adopted, moreover, it appeared that a PCS provider with a carrier's-carrier strategy – Nextwave – would develop to provide an alternative to the existing resale-resistant incumbents. If the Commission were to modify or eliminate its entrepreneur policies, it would have to consider the correctness of its decision to sunset the resale requirement as well, because part of the basis for the sunset would be eliminated.

---

<sup>12/</sup> 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, et al., 17 C.R. (P & F) 404, released Sept. 22, 1999, at ¶ 21.

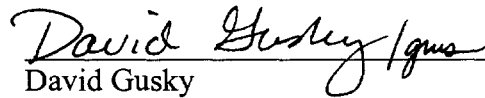
<sup>13/</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, 11 FCC Rcd 18455, FCC 96-23, released July 12, 1996, at ¶¶ 23-23.

<sup>14/</sup> ASCENT has vigorously opposed any sunset of the resale obligation, even if there are a large number of CMRS licensees operational at the time of sunset.

## CONCLUSION

The Commission should adopt the proposals set forth above for the reasons outlined in these comments.

Respectfully submitted,

  
David Gusky  
Executive Vice President  
The Association of Communications Enterprises  
1401 K Street, N.W., Suite 600  
Washington, D.C. 20006  
(202) 835-9898

June 22, 2000